

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BRIAN A. PERRI,

Petitioner,

v.

WARDEN OF FCI FORT DIX,¹

Respondent.

Civil Action No. 20-13711 (RBK)

**MEMORANDUM OPINION
& ORDER**

Before the Court is Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner did not pay the filing fee or submit an application to proceed *in forma pauperis*.

Under the Local Rules, an application to proceed *in forma pauperis* must include an:

affidavit setting forth information which establishes that the prisoner is unable to pay the fees and costs of the proceedings and shall further submit a certification signed by an authorized officer of the institution certifying (1) the amount presently on deposit in the prisoner's prison account and, (2) the greatest amount on deposit in the prisoner's prison account during the six-month period prior to the date of the certification.

L. Civ. R. 81.2(b). The Court shall therefore terminate the case and direct the Clerk to send Petitioner a blank application to proceed *in forma pauperis*.

Additionally, Petitioner has sought to seal his *entire* petition and the supporting documents. As a general matter, there is a "common law public right of access to judicial proceedings and records," *In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2001), yielding a "strong presumption" of openness that may only be overcome by a showing that "disclosure will work a clearly defined and serious injury to the party seeking closure," *In re Avandia Marketing Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (internal quotation omitted). Even if a document

¹ Petitioner named the United States of America as the respondent, but the proper respondent under § 2241 is the warden of the facility holding the petitioner.

contains material that would work a serious injury if disclosed, the Court must still “consider whether there is a less restrictive option to sealing the entire [document].” *Fair Lab. Practices Assocs. v. Riedel*, 666 F. App’x 209, 213 (3d Cir. 2016).

Local Civil Rule 5.3 governs motions to seal, which provides in relevant part that the motion must describe with particularity: “(a) the nature of the materials or proceedings at issue; (b) the legitimate private or public interests which warrant the relief sought; (c) the clearly defined and serious injury that would result if the relief sought is not granted; [and] (d) why a less restrictive alternative to the relief sought is not available.” L. Civ. R. 5.3(c)(3).

With those principles in mind, the Court has temporarily sealed the Petition and supporting documents and will now order Petitioner to submit a formal motion to seal. Petitioner shall also *specifically identify* what information he would like to seal, and which documents he would like to seal. If Petitioner insists on sealing the entire Petition and all of the exhibits, he shall explain why he cannot submit a redacted copy of his Petition and exhibits.

THEREFORE, it is on this 26th day of October 2020;

ORDERED that the Clerk of the Court shall substitute the “Warden of FCI Fort Dix,” as the Respondent in this matter; and it is further

ORDERED that the Clerk of the Court shall **administratively terminate** this case for Petitioner’s failure to either pay the requisite filing fee of \$5.00 or submit an application to proceed *in forma pauperis* and for Petitioner’s failure to use the correct form; and it is further

ORDERED that the Clerk of the Court shall send Petitioner a blank form application to proceed *in forma pauperis* – DNJ-Pro Se-007-B-(Rev. 09/09); and it is further

ORDERED that if Petitioner wishes to reopen this case, he shall so notify the Court, in writing addressed to the Clerk of the Court, Mitchell H. Cohen Building and U.S. Courthouse, Fourth and Cooper Streets, Camden, New Jersey, 08101, within 30 days of the date of entry of this

Order. Petitioner's writing shall include a complete application to proceed *in forma pauperis* or the filing fee; and it is further

ORDERED that if Petitioner wishes to reopen this case, he shall also submit a formal motion to seal specifically addressing the issues discussed above, within 30 days of the date of entry of this Order; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Petitioner by regular U.S. mail.

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge